



CITY OF ARCHDALE

CITY COUNCIL

MEETING DATE: February 22, 2022

SUBJECT: Adoption of Stormwater Operations and Maintenance Agreement.

RECOMMENDATIONS OR COMMENTS: Stormwater control systems are required with almost all new development in the City of Archdale. Private property owners and property owners' associations are required to ensure the stormwater controls are installed in accordance with accepted, approved plans and then maintained over time.

Best practices in stormwater management include the recordation of language to spell out who is responsible for construction, operations, and maintenance of stormwater devices. The proposed Stormwater Operations and Maintenance Agreement would be uniformly used for all future development where stormwater devices are required. The developer will record this document prior to commencing their projects certifying that they are responsible for necessary stormwater improvements and maintenance. Any time the property changes hands, a new agreement will be required to memorialize the new owner as responsible for stormwater operations on the property.

Staff recommends adoption of the agreement document.

SUMMARY OF ATTACHED INFORMATION: Proposed Stormwater Operations and Maintenance Agreement.

ATTACHMENTS: ☒ YES ☐ NO

Prepared by: Elizabeth M. Koonce, a licensed North Carolina attorney
Return to: Roberson Haworth & Reese, PLLC, P.O. Box 1550, High Point, NC 27260

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

STORMWATER OPERATIONS AND MAINTENANCE AGREEMENT

This **Stormwater Operations and Maintenance Agreement** is made and entered into this the ____ day of _____, 20 __, by and between the City of Archdale, a North Carolina Municipality (hereinafter "the City") and _____ (hereinafter "the Property Owner").

RECITALS:

A. **WHEREAS**, the Property Owner is the owner of certain real property as described in that deed recorded in Book _____, Page _____, Randolph County Registry (hereinafter "the Property"), which Property is located within the jurisdictional limits of the City of Archdale; and

B. **WHEREAS**, in order to develop the Property, the Property Owner will be required to construct and maintain certain stormwater control measures and associated conveyance systems (collectively the "Stormwater Control System"), all in accordance with plans and specifications approved by the City, and in compliance with those regulations and requirements for stormwater control implemented by the City and the State of North Carolina currently existing at the time of this Agreement, and as amended from time to time (collectively the "Stormwater Control Regulations"); and

C. **WHEREAS**, the Property Owner has applied to the City for the issuance of a Certificate of Plan Approval ("the Certificate"), which will allow the Property Owner, its successors and assigns, to construct, maintain, and operate the Stormwater Control System; and

D. **WHEREAS**, in order to ensure that the Stormwater Control System is properly constructed, maintained, and operated in accordance with the Certificate and all Stormwater Control Regulations, the City requires the execution of this Agreement by the Property Owner prior to issuance of the Certificate.

NOW, THEREFORE, in consideration of the benefits to the Developer in being able to obtain the Certificate and to provide a Stormwater Control System for the development of the Property, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Property Owner for itself, its successors and assigns, does hereby agree as follows:

1. Construction of the Stormwater Control System: The Property Owner shall construct the Stormwater Control System in accordance with the Certificate and the plans and specifications for the Stormwater Control System as approved by the City Engineer, and shall thereafter operate and maintain the Stormwater Control System in accordance with said Certificate, said plans and specifications, and the Stormwater Control Regulations, and all additions and amendments thereto.

2. Transfers: The Property Owner agrees that it shall not transfer ownership and/or control of the Stormwater Control System until a) construction has been finally completed in accordance with the Certificate and the City Engineer has approved the completed construction and as-built records, b) all current and any past due annual inspection reports have been submitted to the City Engineer and approved, and c) if the Transferee is a Property Owners Association or Homeowners Association, all of the Common Areas in all current and future phases of the development have been conveyed to said Association(s). Once the foregoing requirements have been satisfied, the City will then reissue the Certificate to the new Property Owner, at which time the Transferring Property Owner shall be released from any obligations hereunder arising from events or circumstances occurring after the date the Stormwater Control System is transferred and the Certificate is reissued to the new Property Owner. The Transferring Property Owner shall remain responsible for the operation and maintenance of the Stormwater Control System until the Certificate has been reissued to the Transferee Property Owner. Upon reissuance of the Certificate to the Transferee Property Owner, all obligations of operation, maintenance, and repair of the Stormwater Control System shall be automatically transferred, assigned to, and assumed by the Transferee Property Owner, and the Transferee Property Owner shall become the "Property Owner" under this Agreement. All subsequent transfers between Property Owners shall comply with the requirements of this Section 2.

3. Annual Inspections: The Property Owner shall be responsible for having the Stormwater Control System inspected annually by a qualified inspector (as determined by the City Engineer), and shall provide to the City (at no cost to the City) an Annual Maintenance and Inspection Report through the City's current active Official Website. The Property Owner's failure to provide said Annual Maintenance and Inspection Report to the City prior to June 30th of each year may result in fines assessed against the Property Owner. The City Engineer may, at their discretion, also make unannounced inspections of the Stormwater Control System to ensure that the required maintenance has been conducted appropriately and the performance of the Stormwater Control System is in compliance with the Certificate, the approved plans and specifications, and all Storm Water Control Regulations and all amendments thereto. The Property Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Control System at such times that the City deems necessary. This right of entry in no way confers an obligation on the City to assume responsibility for the Stormwater Control System.

4. Maintenance of the Stormwater Control System: The Property Owner shall maintain the Stormwater Control System in good working order acceptable to the City and in accordance with the Certificate, approved plans and specifications, and all Stormwater Control Regulations and all amendments thereto. In the event that the Property Owner fails to maintain the Stormwater Control System as set forth above, the City may, after ten (10) days' notice to the Property Owner, assess fines, enter the Property, and

take whatever steps the City deems necessary to return the Stormwater Control System to good working order acceptable to the City. It is expressly understood and agreed by the Parties that the City is under no obligation to construct, maintain, or repair the Stormwater Control System, and in no event shall this Agreement be construed to impose any such obligation on the City. In the event that the City, pursuant to this Agreement, performs work of any nature on the Stormwater Control System or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, then the Property Owner shall reimburse the City for all of said costs within thirty (30) days of receipt from the City of a list of all the costs incurred by the City hereunder, and/or shall forfeit any required bond upon demand. If the Property Owner has not reimbursed the City in full for said costs within said thirty (30) day period, then the City shall secure a lien against the Property in the amount of said costs. The actions described above are in addition to and not in lieu of and any and all legal remedies available to the City as a result of the Property Owner's failure to maintain the Stormwater Control System.

5. Indemnification: The Property Owner hereby agrees to release, indemnify, defend, save, and hold harmless the City, its officials, officers, agents, and employees from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys' fees, and costs of litigation, of any nature whatsoever, including but not limited to, claims for special, incidental, direct, indirect, and consequential damages arising out of, or in any way related to, the Stormwater Control System and/or any work performed by the City to the Stormwater Control System pursuant to Section 4 above.

6. Recordation; Restrictive Covenant: This Agreement shall constitute a restrictive covenant running with the Property, and shall be binding on the heirs, successors and assigns of the Property Owner and any subsequent Transferees. The Property Owner shall cause this Agreement to be recorded in the appropriate Register of Deeds office; the Office of the Register of Deeds Randolph County, North Carolina, or the Office of the Register of Deeds Guilford County, North Carolina. The City may, at its sole option, choose to withhold the release of any certificates of occupancy or subdivision approval until such recordation has taken place.

7. Enforcement; Invalidation: This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest. Invalidation of any one of the paragraphs of this agreement shall in no way affect the validity of any other paragraphs, and all other paragraphs shall remain in full force and effect.

8. Modification and Amendment: This Agreement may be amended only by written agreement signed by the City and the Property Owner, or their respective successors and assigns. This Agreement contains the entire agreement among the Parties, and all prior and collateral representations, promises, and conditions in connection with the subject matter hereof are merged herein.

9. Caption Headings: The headings and captions used in this Agreement are used for convenience only, and shall not be deemed to limit, amplify, or modify the terms of this Agreement.

10. Governing Law: This Agreement shall be construed in accordance with the laws of the State of North Carolina.

11. Binding Effect: The Parties agree that the terms and provisions of this Agreement shall be binding upon, and ensure to the benefit of, the Parties hereof, their heirs, executors, administrators, successors in interest, and assigns.

In witness whereof, the Parties hereto duly execute this Agreement to be affective as of the day and year first above written.

PROPERTY OWNER

BY: _____

Name: _____

Title: _____

**APPROVED AND ACCEPTED BY THE
CITY OF ARCHDALE**

BY: _____

ZEB HOLDEN, CITY MANAGER

State of North Carolina

County of _____

I, _____, a Notary Public of _____ County and State aforesaid, certify that the following persons who are known to me or proved to me on the basis of satisfactory evidence to be the person described, personally appeared before me this day; each acknowledging to me that he/she/they is/are _____ of _____, a North Carolina limited liability company/corporation, and that by authority duly given as _____ of the Company, they voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated:

Name & Title

Date: _____

_____, Notary Public

Notary's Printed or Typed Name

(Official/Notarial Seal)

My Commission Expires: _____

State of North Carolina

County of _____

I, _____, a Notary Public of _____ County and State of North Carolina, do hereby certify that the following person(s) who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, each personally appeared before me this day, acknowledging to me that he/she/they voluntarily signed the foregoing instrument for the purpose stated therein and in the capacity indicated:

ZEB HOLDEN, City Manager for the City of Archdale

Date: _____

_____ Notary Public

Notary's Printed or Typed Name

(Official/Notarial Seal)

My Commission Expires: _____